



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/210,995	12/15/98	LOOSMORE	S 1038-844MIS:

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HM22/0607

EXAMINER

HINES, J

ART UNIT

PAPER NUMBER

1641

9

AIR MAIL

DATE MAILED:

06/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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# Advisory Action

Application No.  
09/210,995

Applicant(s)

Loosmore et al.

Examiner

Ja-Na Hines

Group Art Unit  
1641



THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 6 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Apr 14, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☐ The proposed amendment(s):
- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
  - ☐ will not be entered because:
    - ☐ they raise new issues that would require further consideration and/or search. (See note below).
    - ☐ they raise the issue of new matter. (See note below).
    - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
    - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

- ☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:

Applicant argues features not claimed and continues to argue that there is no suggestion to combine, however these arguments are not persuasive.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: NONE

Claims objected to: NONE

Claims rejected: 1-24

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Other

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## ADVISORY ACTION

### *Oath/Declaration*

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required.

### *Response to Arguments*

2. Applicant's arguments filed April 14, 2000 have been fully considered but they are not persuasive. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barenkamp et al., (WO 97/36,914) in view of Loosmore et al., is maintained.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the Hin47 protein has decreased protease activity) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, it would have been obvious at the time of applicant's invention to have an immunogenic composition to confer protection

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against *Haemophilus influenzae* comprising at least two different antigens, where one is a high molecular weight adhesin protein, HMW1 or HMW2, since Barenkamp et al.(WO 97/36,914), teaches that adhesin proteins are potentially important protective antigens which should comprise one component of a multi-component non-typeable *H. influenzae* vaccine and the other component as taught by Loosmore et al., is an analog of Hin47 because Hin47 is a non-proteolytic heat shock protein which substantially reduced in proteolytic activity and can be used as an antigen and be included in other immunogenic preparations.


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is (703) 305-0487. The examiner can normally be reached on Monday through Thursday from 6:30am to 4:00pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Ja-Na Hines

May 8, 2000

  
CHRISTOPHER L. CHIN  
PRIMARY EXAMINER  
GROUP 1800-1641